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CALVIN M. FAULEY

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CALVIN M. FAULEY,

Plaintiff,

v.

SETERUS, INC.,

Defendants.

Case No. 2:17-cv-02962-RFB-VCF

**STIPULATED
PROTECTIVE ORDER**

IT IS HEREBY STIPULATED by and between Plaintiff CALVIN M. FAULEY (“Plaintiff”) and Defendant SETERUS, INC. (“Seterus”) (collectively, the “Parties”), by and through their counsel of record, agree to enter into a Confidentiality Agreement and Stipulated Protective Order (“Order”) as follows:

WHEREAS, documents and information have been and may be sought, produced or exhibited by and among the parties to this action relating to trade secrets, confidential research, development, technology or other proprietary information belonging to Seterus and/or personal income, credit and other confidential information of Plaintiff.

THEREFORE, an Order of this Court protecting such confidential information shall be and hereby is made by this Court on the following terms:

1. In this Stipulated Protective Order, the words set forth below shall have the following meanings:

1 (a) **“Proceeding”** means the above-entitled proceeding *Calvin M.*
2 *Fauley v. Ocwen Loan Servicing, LLC et al.*, Case No. 2:17-cv-02962-RFB-VCF in the
3 United States District Court, District of Nevada

4 (b) **“Court”** means the Honorable Richard F. Boulware or any judge
5 to which this Proceeding may be assigned, including Court staff participating in any such
6 proceedings.

7 (c) **“Document”** or **“Documents”** means (i) any **“Writing,”**
8 **“Original,”** and **“Duplicate”** means any writing or recording as defined in NRS 52.225,
9 and includes all forms of electronic data, produced in a legible and readable format.
10 **“Document”** shall also include any data compilation from which information can be
11 obtained or translated if necessary through detection devices into reasonably usable form,
12 which have been produced in discovery in this Proceeding by any person or entity, and
13 any copies, reproductions, or summaries of all or any part of the foregoing.

14 (d) **“Testimony”** means all depositions, declarations, or other
15 testimony taken or used in this Proceeding.

16 (e) **“Information”** means the content of Documents or Testimony.

17 (f) **“Confidential”** means a Document, Testimony, or Information
18 which is in the possession of a Designating Party who believes in good faith that such
19 Document, Testimony, or Information is entitled to confidential treatment under
20 applicable law.

21 (g) **“Confidential Materials”** means any Documents, Testimony, or
22 Information designated as **“Confidential”** pursuant to the provisions of this Stipulated
23 Protective Order.

24 (h) **“Highly Confidential”** means any Information which belongs to a
25 Designating Party who believes in good faith that the Disclosure of such Information to
26 another Party or non-Party would create a substantial risk of serious financial or other
27 injury that cannot be avoided by less restrictive means.

1 (i) **“Highly Confidential Materials”** means any Documents,
2 Testimony, or Information designated as “Highly Confidential” pursuant to the
3 provisions of this Stipulated Protective Order.

4 (j) **“Designating Party”** means the Party or non-Party that designates
5 Documents, Testimony, or Information as “Confidential” or “Highly Confidential.”

6 (k) **“Receiving Party”** means a Party that receives Documents,
7 Testimony, or Information from a Designating Party.

8 (l) **“Disclose”** or **“Disclosed”** or **“Disclosure”** means to reveal,
9 divulge, give, or make available any Confidential Materials or Highly Confidential
10 Materials, or any part thereof, or any information contained therein.

11 2. This Order shall govern the use, handling and disclosure of all Documents,
12 Testimony or Information produced or given in this Proceeding which are designated to be
13 subject to this Order in accordance with the terms hereof.

14 3. Each Party or non-Party that designates Documents, Testimony, or Information
15 for protection under this Stipulated Protective Order must take care to limit any such designation
16 to the specific material that qualifies under the appropriate standards.

17 (a) The Designating Party shall have the right to designate as “Confidential”
18 any Documents, Testimony, or Information that the Designating Party in good faith believes to
19 contain non-public information that is entitled to confidential treatment under applicable law
20 and/or the terms of this Stipulated Protective Order.

21 (b) The Designating Party shall have the right to designate as “Highly
22 Confidential” only the non-public Documents, Testimony, or Information that the Designating
23 Party in good faith believes would create a substantial risk of serious financial or other injury, if
24 Disclosed to another Party or non-Party, and that such risk cannot be avoided by less restrictive
25 means.

26 4. Any party or non-party producing or filing Documents, Testimony, or Information
27 in this Proceeding may designate such materials and the information contained therein subject to
28 this Order by typing or stamping on the front of the document, or on the portion(s) of the

1 document for which confidential treatment is designated, “Confidential” or notating the same in
2 a Disclosure of Witnesses and Documents made pursuant to Fed. R. Civ. P. Rule 16, and any
3 supplements thereto, clearly identifying the applicable Bate number ranges.

4 5. To the extent any motions, briefs, pleadings, deposition transcripts, or other
5 papers to be filed with the Court incorporate documents or information subject to this Order, the
6 party filing such papers shall designate such materials, or portions thereof, as “Confidential,” and
7 shall file them with the clerk under seal; provided, however, that a copy of such filing having the
8 confidential information deleted therefrom may be made part of the public record. Any party
9 filing any document under seal must comply with the requirements of Local Rules.

10 6. All Documents, Testimony, or Information subject to this Order, and all
11 information derived therefrom (including, but not limited to, all testimony, deposition, or
12 otherwise, that refers, reflects or otherwise discusses any information designated Confidential
13 hereunder), shall not be used, directly or indirectly, by any person, including Plaintiff, and
14 Seterus, for commercial or competitive purposes or for any purpose whatsoever other than solely
15 for the preparation and trial of this Proceeding in accordance with the provisions of this Order.

16 7. All depositions or portions of depositions taken in this Proceeding that contain
17 confidential information may be designated as “Confidential” and thereby obtain the protections
18 accorded other confidential information. The parties shall have twenty-one (21) days from the
19 date a deposition is taken, or fourteen (14) days from the date a deposition transcript is received,
20 whichever date is greater, to serve a notice to all parties designating portions as “Confidential.”
21 Until such time, all deposition testimony shall be treated as confidential information. To the
22 extent any designations are made on the record during the deposition, the designating party need
23 not serve a notice re-designating those portions of the transcript as confidential information.
24 Any party may challenge any such designation in accordance with Paragraph 14 of this Order.

25 8. Except with the prior written consent of the individual or entity designating a
26 document or portions of a document as “Confidential,” or pursuant to prior Order after notice,
27 any document, transcript or pleading given “Confidential” treatment under this Order, and any
28 information contained in, or derived from any such materials (including but not limited to, all
deposition testimony that refers, reflects or otherwise discusses any information designated

1 confidential hereunder) may not be disclosed other than in accordance with this Order and may
2 not be disclosed to any person other than: (a) the Court and its officers; (b) parties to this
3 litigation; (c) counsel for the parties, whether retained counsel or in-house counsel and
4 employees of counsel assigned to assist such counsel in the preparation of this litigation; (d) fact
5 witnesses subject to a proffer to the Court or a stipulation of the parties that such witnesses need
6 to know such information; (e) present or former employees of the producing party in connection
7 with their depositions in this Proceeding (provided that no former employees shall be shown
8 documents prepared after the date of his or her departure); (f) court reporters in this Proceeding
9 (whether at depositions, hearings, or any other proceeding) provided that it is noted on the record
10 that the materials are Confidential Materials and subject to this Protective Order; and (g) experts
11 specifically retained as consultants or expert witnesses in connection with this litigation.

12 9. Documents produced pursuant to this Order shall not be made available to any
13 person designated in Subparagraph 8 (g) unless he or she shall have first read this Order, agreed
14 to be bound by its terms, and signed the attached Declaration of Compliance.

15 10. Third parties who are the subject of discovery requests, subpoenas or
16 depositions in this case may take advantage of the provisions of this Protective Order by
17 providing the parties with written notice that they intend to comply with and be bound by the
18 terms of this Protective Order.

19 11. All persons receiving any or all documents produced pursuant to this Order shall
20 be advised of their confidential nature. All persons to whom confidential information and/or
21 documents are disclosed are hereby enjoined from disclosing same to any person except as
22 provided herein, and are further enjoined from using same except in the preparation for and trial
23 of the above-captioned Proceeding between the named parties thereto. No person receiving or
24 reviewing such confidential documents, information or transcript shall disseminate or disclose
25 them to any person other than those described above in Paragraph 6 and for the purposes
26 specified, and in no event, shall such person make any other use of such document or transcript.

27 12. Nothing in this Order shall prevent a party from using at trial any information or
28 materials designated "Confidential."

13. This Order has been agreed to by the parties to facilitate discovery and the

1 production of relevant evidence in this Proceeding. Neither the entry of this Order, nor the
2 designation of any information, document, or the like as “Confidential,” nor the failure to make
3 such designation, shall constitute evidence with respect to any issue in this Proceeding.

4 14. Inadvertent failure to designate any document, transcript, or other materials
5 “Confidential” will not constitute a waiver of an otherwise valid claim of confidentiality
6 pursuant to this Order, so long as a claim of confidentiality is promptly asserted after discovery
7 of the inadvertent failure. If a party designates a document as “Confidential” after it was initially
8 produced, the receiving party, on notification of the designation, must make a reasonable effort
9 to assure that the document is treated in accordance with the provisions of this Order, and upon
10 request from the producing party certify that the designated documents have been maintained as
11 confidential information. **The designating party shall have the burden of proving that any
document designated as CONFIDENTIAL is entitled to such protection.**

12 15. The inadvertent production by any of the undersigned Parties or non-Parties to
13 the Proceeding of any Document, Testimony, or Information during discovery in this Proceeding
14 without a “Confidential” or “Highly Confidential” designation shall be without prejudice to any
15 claim that such item is “Confidential” or “Highly Confidential,” and such Party shall not be held
16 to have waived any rights by such inadvertent production. In the event that any Document,
17 Testimony, or Information that is subject to a “Confidential” or “Highly Confidential”
18 designation is inadvertently produced without such designation, the Party that inadvertently
19 produced the Document, Testimony, or Information shall give written notice of such inadvertent
20 production within twenty (20) days of discovery of the inadvertent production, together with a
21 further copy of the subject Document, Testimony, or Information designated as “Confidential” or
22 “Highly Confidential” (the “**Inadvertent Production Notice**”). Upon receipt of such Inadvertent
23 Production Notice, the Party that received the inadvertently produced Document, Testimony, or
24 Information shall promptly destroy the inadvertently produced Document, Testimony, or
25 Information and all copies thereof, or, at the expense of the producing Party, return such together
26 with all copies of such Document, Testimony or Information to counsel for the producing Party
27 and shall retain only the “Confidential” or “Highly Confidential” materials. Should the
28 Receiving Party choose to destroy such inadvertently produced Document, Testimony, or

1 Information, the Receiving Party shall notify the producing Party in writing of such destruction
2 within ten (10) days of receipt of written notice of the inadvertent production. This provision is
3 not intended to apply to any inadvertent production of any Document, Testimony, or Information
4 protected by attorney-client or work product privileges. In the event that this provision conflicts
5 with any applicable law regarding waiver of confidentiality through the inadvertent production of
6 Documents, Testimony or Information, such law shall govern.

7 16. Within sixty (60) days after the final termination of this litigation, all Document,
8 Testimony, or Information afforded confidential treatment pursuant to this Order, including any
9 extracts, summaries or compilations taken therefrom, but excluding any materials which in the
10 good faith judgment of counsel are work product materials, shall be returned to the Producing
11 Party. In lieu of return, the parties may agree to destroy the documents, to the extent practicable.
12 In the event that any party to this litigation disagrees at any point in these Proceedings with any
13 designation made under this Protective Order, the parties shall first try to resolve such dispute in
14 good faith on an informal basis. If the dispute cannot be resolved, the party objecting to the
15 designation may seek appropriate relief from this Court. During the pendency of any challenge
16 to the designation of a document or information, the designated document or information shall
continue to be treated as “Confidential” subject to the provisions of this Protective Order.

17 17. Any Party may challenge a “Confidential” or Highly Confidential” designation
18 at any time. Unless a prompt challenge to a Designating Party’s designation is necessary to
19 avoid foreseeable and substantial unfairness, unnecessary economic burdens, or a significant
20 disruption or delay of the litigation, a Party does not waive its right to challenge a
21 confidentiality designation by electing not to mount a challenge promptly after the original
22 designation is disclosed. In the event that counsel for a Party receiving Documents, Testimony,
23 or Information in discovery designated as “Confidential” or “Highly Confidential” objects to
24 such designation with respect to any or all of such items, said counsel shall advise counsel for
25 the Designating Party, in writing, of such objections, the specific Documents, Testimony or
26 Information to which each objection pertains, and the reasons for such objections (the
27 “**Designation Objections**”). Counsel for the Designating Party shall have thirty (30) days from
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1 receipt of the written Designation Objections to either (a) agree in writing to de-designate
2 Documents, Testimony, or Information pursuant to any or all of the Designation Objections
3 and/or (b) file a motion with the Court seeking to uphold any or all designations on
4 Documents, Testimony, or Information addressed by the Designation Objections (the
5 “**Designation Motion**”). Pending a resolution of the Designation Motion by the Court, any and
6 all existing designations on the Documents, Testimony, or Information at issue in such Motion
7 shall remain in place. The Designating Party shall have the burden on any Designation Motion
8 of establishing the applicability of its “Confidential” or “Highly Confidential” designation. In
9 the event that the Designation Objections are neither timely agreed to nor timely addressed in a
10 Designation Motion, then such Documents, Testimony, or Information shall be de-designated
11 in accordance with the Designation Objection applicable to such material.

12 18. Nothing herein shall affect or restrict the rights of any party with respect to its
13 own documents or to the information obtained or developed independently of documents,
14 transcripts and materials afforded confidential treatment pursuant to this Order.

15 19. The Court retains the right to allow disclosure of any subject covered by this
16 Order or to modify this stipulation at any time in the interest of justice.

17 20. Entering into, agreeing to and/or producing or receiving Confidential materials, or
18 otherwise complying with the terms of this Order shall not:

19 (a) operate as an admission by any party that any particular Confidential material
20 contains or reflects any type of confidential information;

21 (b) prejudice in any way the rights of the parties to object to the production of documents
22 they consider not subject to discovery, or operate as an admission by any party that the
23 restrictions and procedures set forth herein constitute adequate protection for any particular
24 information deemed by any party to be Confidential material;

25 (c) prejudice in any way the rights of any party to object to the authenticity or
26 admissibility into evidence of any document, testimony or other evidence subject to this Order;

27 (d) prejudice in any way the rights of a party to seek a determination by the Court
28 whether any document or information requested or produced in this Proceeding during the

1 course of discovery or otherwise, or Confidential material should be subject to the terms of this
2 Order;

3 (e) prejudice in any way the rights of a party to petition the Court for a further protective
4 order relating to any purportedly confidential information; or

5 (f) prevent the parties to this Stipulation and Order from agreeing to alter or waive the
6 provisions or protections provided for herein with respect to any particular information or
7 documents requested or produced in the course of discovery or otherwise.

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1 20. The Parties agree to be bound by the terms of this Stipulation and Order pending its
2 the entry by the Court, and any violation of its terms shall be subject to the same sanctions and
3 penalties as if the same had already been entered by the Court.

4 21. This Order shall survive the termination of this litigation. This Court shall retain
5 jurisdiction, even after termination of this lawsuit, to enforce this Order and to make such
6 amendments and modifications to this Order as may be appropriate.

7 **IT IS SO STIPULATED.**

8 Dated March 6, 2018

9 <u>/s/ David H. Krieger, Esq.</u> 10 David H. Krieger, Esq. 11 Nevada Bar No. 9086 12 HAINES & KRIEGER, LLC 13 8985 S. Eastern Avenue, Suite 350 14 Henderson, Nevada 89123 15 Office: (702) 880-5554 16 dkrieger@hainesandkrieger.com 17 Attorneys for Plaintiff 18 CALVIN M. FAULEY	9 <u>/s/ Natalie C. Lehman, Esq.</u> 10 Natalie C. Lehman, Esq. 11 Wright, Findlay & Zak, LLP 12 7785 W. Sahara Ave. 13 Suite 200 14 Las Vegas, NV 89117 15 Office: (702) 475-7964 16 nlehman@wrightlegal.net 17 Attorneys for Defendant 18 SETERUS, INC.
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19 **IT IS SO ORDERED.**

20 March 6, 2018

21 Dated: _____, _____

22 **ORDER**

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24 UNITED STATES MAGISTRATE JUDGE
25 Case No. 2:17-cv-02962-RFB-VCF

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EXHIBIT A
DECLARATION OF COMPLIANCE

I, _____, declare as follows:

- 1. My address is _____.
- 2. My present employer is _____.
- 3. My present occupation or job description is _____.

4 I have received a copy of the Stipulated Protective Order entered in this Proceeding on _____, 20____.

5 I have carefully read and understand the provisions of this Stipulated Protective Order in Case No. 2:17-cv-02962-RFB-VCF.

6 I will comply with all provisions of this Stipulated Protective Order.

7 I will hold in confidence, and will not disclose to anyone not qualified under the Stipulated Protective Order, any information, documents or other materials produced subject to this Stipulated Protective Order.

8 I will use such information, documents or other materials produced subject to this Stipulated Protective Order only for purposes of this present Proceeding.

9 Upon termination of this Proceeding, or upon request, I will return and deliver all information, documents or other materials produced subject to this Stipulated Protective Order, and all documents or things which I have prepared relating to the information, documents or other materials that are subject to the Stipulated Protective Order, to my counsel in this Proceeding, or to counsel for the party by whom I am employed or retained or from whom I received the documents.

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10. I hereby submit to the jurisdiction of this Court for the purposes of enforcing the Stipulated Protective Order in this Proceeding and agree that this Court shall have continuing jurisdiction to enforce the Stipulated Protective Order after the conclusion of the Proceeding.

I declare under penalty of perjury under the laws of the United States that the following is true and correct.

Executed this ____ day of _____, 2018 at _____.

Qualified Person